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1 RECORD OF ORAL HEARING  
2  
3 UNITED STATES PATENT AND TRADEMARK OFFICE  
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6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES  
8  
9

10 *Ex parte* MICHAEL A. SHARP  
11  
12

13 Appeal 2009-010968  
14 Application 09/765,985  
15 Technology Center 3600  
16  
17

18 Oral Hearing Held: March 18, 2010  
19  
20

21 Before HUBERT C. LORIN, ANTON W. FETTING, and  
22 BIBHU R. MOHANTY, *Administrative Patent Judges*.  
23

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The above-entitled matter came on for hearing on Thursday, March 18, 2010, commencing at 10:30 a.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Victoria L. Wilson, Notary Public.

MR. JONCUS: Good morning.

JUDGE LORIN: Good morning.

THE USHER: Good morning. Calendar number 64. Appeal number 2009-010968. Mr. Joncus.

JUDGE LORIN: Great. Thank you very much.

THE USHER: You're welcome.

JUDGE LORIN: Okay. Could we have all of your names, beginning with you, sir.

MR. JONCUS: My name is Steven Joncus.

JUDGE LORIN: Please, if you could spell your name for the court reporter, please.

MR. JONCUS: J-O-N-C-U-S.

MR. HAGERMAN: William Hagerman. That's H-A-G-E-R-M-A-N.

MR. UNDERHILL: Rodney Underhill, U-N-D-E-R-H-I-L-L, corporate counsel.

MR. SHARP: My name is Michael Sharp, S-H-A-R-P. Good morning.

MR. JONCUS: Your Honors, I --

JUDGE LORIN: Welcome, counsel. We have read the record. We are up to date. When you are ready, you may proceed. You have 20 minutes.

MR. JONCUS: Okay. I brought a bench book.

JUDGE LORIN: Okay. Is there anything in this bench book that isn't of record?

1 MR. JONCUS: There is a figure in there, yes.

2 JUDGE LORIN: That's not been in your Brief?

3 MR. JONCUS: I have marked up a page from the -- from the -- it is a  
4 demonstrative.

5 JUDGE LORIN: That's never been put in the record before, is that new?

6 MR. JONCUS: That's new, the markups are.

7 JUDGE LORIN: The hearings are being held with evidence that's been  
8 presented to us before the hearing.

9 MR. JONCUS: Okay.

10 JUDGE LORIN: We don't want to be seeing or hearing about evidence that's  
11 new before us now that's not been in the record.

12 MR. JONCUS: Okay. It is just underlying existing evidence.

13 JUDGE LORIN: You are welcome to pull those pages out and give us what's  
14 left if it's been in the record.

15 MR. JONCUS: Your Honors, the Examiner did not meet his burden of  
16 articulating a prima facie case of obviousness in this case. The Examiner  
17 admitted that the Wolfe reference does not disclose storing the files that are  
18 downloaded on a computer. But storing the files that are downloaded to a  
19 computer is an essential element of the Sharp invention. You have to have a  
20 download and you have to have storage, you have to have the capability to  
21 replay. Wolfe simply does not disclose downloading. Wolfe is about  
22 streaming.

23 JUDGE LORIN: All right, counsel. I'm going to stop you right away because  
24 I know that this is the key issue in this case --

25 MR. JONCUS: Yes.

26 JUDGE LORIN: -- between you and the Examiner.

1 MR. JONCUS: Yes.

2 JUDGE LORIN: I don't mean to interrupt you but I think it is important that  
3 we get this on the table. There seems to be an agreement between you and the  
4 Examiner that Wolfe teaches streaming.

5 MR. JONCUS: Yes.

6 JUDGE LORIN: My question to you is how is that so?

7 MR. JONCUS: How does Wolfe teach streaming?

8 JUDGE LORIN: How is it that Wolfe teaches streaming only?

9 MR. JONCUS: It uses the word "stream" several times.

10 JUDGE LORIN: Right.

11 MR. JONCUS: It refers to not wanting people to disseminate files. So if you  
12 were to download a file, people could disseminate it. It refers to a model of  
13 paying the advertisers or receiving money from the advertisers based on pay  
14 for play.

15 So if you were to download a file, you would never know how many times the  
16 user played that file in the situation of a download. In the situation of a  
17 stream, the transfer of the data happens every time, so you know every time  
18 when you stream the file that it's being streamed and you get a compensation  
19 from the advertiser for that playing of that stream.

20 JUDGE LORIN: Now, I have read Wolfe and I think I only saw the word  
21 "stream" once in that reference.

22 MR. JONCUS: I think it is several times.

23 JUDGE LORIN: I see it here in column 2 at line 63 and it states, "The  
24 subscriber selected content into a single data stream."

25 MR. JONCUS: Right. And that's talking about streaming. Data stream is a

1 stream. It is not a download. Wolfe, also, in column 1 says, "We are trying to  
2 be just like TV," in column 1, lines -- around line 45.

3 It is desirable to provide an Internet-based system for the dissemination of  
4 valuable proprietary information free of charge just as is provided through a  
5 network television and radio stations. That is the classic way of streaming  
6 information is radio and TV for computers.

7 That's what this invention is all about is -- is streaming. And it also involves  
8 the innovation here, because you are using a computer, as targeting the  
9 advertising for the subscriber.

10 So when you stream and the subscriber says I want this particular song to play,  
11 the interface on the Internet knows who the subscriber is and says, oh, for that  
12 type of subscriber, we use this ad and adds that ad in realtime to the beginning  
13 of the stream and that's the way this system targets the subscribers with  
14 advertisements.

15 JUDGE LORIN: Well, I see, also, in the reference that the delivery is also  
16 over the Internet.

17 MR. JONCUS: Yes.

18 JUDGE LORIN: I don't understand why this reference is being viewed strictly  
19 as streaming as opposed to downloading.

20 MR. JONCUS: Well, streaming and downloading are two different ways of  
21 delivering content over the Internet; would you agree with that?

22 JUDGE LORIN: Yes. My difficulty is you are defining streaming as distinct  
23 from downloading. My understanding is that downloading is simply a matter  
24 of transferring a file from one computer to another.

25 MR. JONCUS: That's true, but including saving -- saving the file.

1 JUDGE LORIN: I haven't seen anything in the record that has established that  
2 the definition for downloading is that it is required to be stored.

3 MR. JONCUS: That's what the Austerberry Declaration --

4 JUDGE LORIN: I understand it is a declaration of someone saying that but I  
5 haven't seen any -- I haven't seen any objective evidence that establishes the  
6 definition for downloading to require storing.

7 MR. JONCUS: An expert's declaration, I think, is objective evidence.

8 JUDGE LORIN: It is evidence we will certainly consider, that is true.

9 JUDGE MOHANTY: Do you have a definition in your specification?

10 MR. JONCUS: I don't believe there is a definition in the specification but it  
11 does say store and some of the claims require storing.

12 JUDGE LORIN: Right, but we are talking about the main claim, the  
13 independent claim is what we are focused on now.

14 MR. JONCUS: Well, claim 30 is an independent claim.

15 JUDGE LORIN: Well, let's begin with claim 14 --

16 MR. JONCUS: Okay.

17 JUDGE LORIN: -- and work our way to the other claims.

18 JUDGE MOHANTY: Claim 14 says, "available," the files are available for  
19 downloading. It doesn't require them to be downloaded, does it?

20 MR. JONCUS: You are correct, it is available for download, but to be  
21 available for download, it means it must be downloadable and must be in the  
22 right format and available when someone asks for it to be downloaded.

23 JUDGE MOHANTY: Wouldn't the streamable files, wouldn't you be able to  
24 download that if you wanted to with some cell phone to your computer?

25 MR. JONCUS: No. According to our declaration that was submitted, you

1 cannot save data from a stream. It is not -- it is not permitted by the software.  
2 Now, conceivably, someone could pirate -- and we talked about that, too, in  
3 our Declaration -- someone could pirate the stream but that's beyond the  
4 ordinary skill in the art that's been defined in this case.

5 JUDGE LORIN: Well, you know, we have to stay focused here because  
6 words are being used in different ways and we are bringing in different factors.  
7 First, assuming arguendo that Wolfe is exclusively directed to streaming and  
8 that it does not also cover what you would define as downloading, if we say it  
9 is purely streaming, how is it that a streaming -- that a streaming  
10 communication cannot be downloaded?

11 MR. JONCUS: It is not in the right format. Streams are not set up, the  
12 software on either end, is not set up to save that file. The data comes through  
13 the pipe from the Internet from the service provider to the customer. It goes  
14 through the computer. It is played in realtime, like a TV program, and may be  
15 buffered, even, but it is then discarded. That is the protocol that's described in  
16 the Austerberry Declaration for -- for streaming.

17 JUDGE LORIN: Your argument presumes two things, that streaming -- that a  
18 streaming audio has characteristics that make it incapable of being stored.

19 That's one assumption you are making in your argument.  
20 And that second assumption is that download means you must store it. If you  
21 take download to mean simply transferring data from one computer to another,  
22 that's what streaming does anyway, because if you don't, how could the person  
23 who is receiving the stream be able to even hear it.

24 MR. JONCUS: It is not saved for any extended period of time. It cannot be  
25 replayed. I mean we know examples today of these two different things going  
26 on. YouTube, you can't save and replay a stream on YouTube.



1 JUDGE LORIN: Now you are bringing in another factor. Now you are saying  
2 that the distinction between your invention and that of the prior art is that it  
3 can be replayed.

4 MR. JONCUS: Yes.

5 JUDGE LORIN: You have said stored, replayed.

6 MR. JONCUS: And disseminated.

7 JUDGE LORIN: These are all factors you are bringing into the word  
8 "download."

9 MR. JONCUS: Yes, and, you know, to the -- this is extrinsic evidence. We  
10 stipulate that those are parts of --

11 JUDGE LORIN: Those are inherent characteristics of download is what you  
12 are saying.

13 MR. JONCUS: Download. And we have detailed claims later -- claim 14  
14 doesn't go into those limitations but claim 30 does. Claim 30 talks about  
15 storage and we have other claims that talk about dissemination to a second  
16 party. And those, as commonly understood by people who understand  
17 streaming, cannot be done with a stream.

18 For example, today you cannot take the YouTube video and -- and view it and  
19 then -- and then copy it and send it to your friend. You can send them the link  
20 so that they could independently stream it but that data that was shown on your  
21 computer cannot be saved and sent to your friend. It is a stream that's not  
22 saved, it is just temporarily played and then discarded.

23 JUDGE LORIN: Okay. Go on, counsel.

24 MR. JONCUS: I think the Examiner's Answer is very telling in this respect.  
25 The Examiner's Answer on page 11 had this response to our point that  
26 downloading requires storage on the hard drive. He said I don't have to show a

1 downloading reference. He didn't say you are wrong, that that -- and say in  
2 another way beyond a conclusory argument that Wolfe discloses downloading.  
3 He said I don't have to give you a downloading reference because claim 14  
4 does not require a download. Claim 14 requires it is available for download  
5 and, therefore, is downloadable and if it got downloaded, it would be saved.  
6 He then incorporates that same answer in response to the other claims, like  
7 claim 30, which claim 30 has the element of saving on the hard drive, he,  
8 basically, says I don't have to show you a download reference. So he has not  
9 met the element required, we would submit, in all these claims, that the data be  
10 saved on the computer to have accomplished the download.

11 JUDGE LORIN: But the problem is the Examiner took your interpretation of  
12 the word "download." You made the argument that the download requires  
13 storing and the Examiner agreed with that interpretation. That's why I'm  
14 raising the question with you is where that construction came from because it  
15 is not in your specification.

16 MR. JONCUS: I believe that's a term of art, that people understand download  
17 to mean storage. When I download a program, I'm taking the program from  
18 some other place and I'm saving it on my computer. You don't talk about  
19 streaming programs, you talk about downloading programs.  
20 When you talk about YouTube or other forms of streaming, you talk about  
21 streaming, not downloading. That's the term that is used for things like  
22 YouTube. It is like TV. There is two different ways of transmitting the data.  
23 The Examiner, I don't think, agreed with us that download includes saving.  
24 He seems to be using the down -- the term "download" interchangeably to  
25 mean either a streaming or saving the file and we submit that's not correct.  
26 That's not a proper interpretation of the word "download."

1 If it takes us to say that we are our own lexicographer and we define,  
2 ourselves, the word "download" as being something that requires storage, we  
3 stipulate to that. That's what's required in this invention is storage of the data  
4 on the hard drive so that it can be transferred to somebody else.

5 JUDGE LORIN: So let me get it straight. Your position is that when one of  
6 ordinary skill in the art reads your claims and reads the term "download," they  
7 would construe it to mean that a file is transferred from the website and then is  
8 stored.

9 MR. JONCUS: Yes.

10 JUDGE LORIN: Okay.

11 MR. JONCUS: It is a batch process as opposed to a realtime process. In a  
12 batch process, the file comes down and then it can be replayed at any time  
13 thereafter and replayed, and in the case of Wolfe, it is a realtime process that  
14 the file -- the data comes down, it is played and discarded.

15 JUDGE LORIN: Right. You are taking the position that Wolfe teaches a  
16 realtime --

17 MR. JONCUS: That's correct.

18 JUDGE LORIN: -- as opposed to your invention, which you argue should be  
19 construed to mean a transfer of a file that is then saved.

20 MR. JONCUS: Right. And Wolfe -- another reason I'm not sure I mentioned  
21 as to why Wolfe does not disclose downloading, because it teaches away from  
22 dissemination. It says we want to have the security in one sentence, talking  
23 about security and coding, to prevent people from disseminating. That  
24 teaches -- we don't want people to have that file and we don't want people to  
25 be able to copy it and disseminate it.

1 I would say there was the question earlier about where in the specification  
2 talks about this. I would point you to paragraph 10 of the Sharp application  
3 where it says, "Alternatively, the user may save the audio file on and transfer  
4 the file from his computer to external multimedia playing devices, such as the  
5 diamond radio. This enables the user to hear the single wave from his  
6 computer."

7 Now, there is nothing in Wolfe that discloses that that's the capability of Wolfe  
8 because Wolfe is talking about streaming and the person of ordinary skill in  
9 the art would understand that a stream is not transferrable, is not -- cannot be  
10 saved and can't be transferred to a small portable device, can't be transferred to  
11 somebody else's computer so that they can play it. The --

12 JUDGE FETTING: Counsel, one of ordinary skill in the art understands that  
13 even streaming is moving data from one place to another.

14 MR. JONCUS: That's correct.

15 JUDGE FETTING: One of ordinary skill in the art would recognize that there  
16 are many ways of accomplishing that, among which is taking a file, FTP or  
17 what have you, and -- to transfer it as whole. Under a 103 rejection, why  
18 wouldn't it at least be an obvious alternative to streaming?

19 MR. JONCUS: Because -- because Wolfe teaches away from streaming --  
20 from downloading. It says you don't want the user to have that file to  
21 disseminate.

22 JUDGE FETTING: In that particular circumstance, but in a different  
23 circumstance, you might, I mean it is just -- he chooses not to but that doesn't  
24 mean there isn't any technical reason, it is just that he chooses not to make it  
25 available because there is no technical reason you couldn't.

1 MR. JONCUS: There is a technical difference between the protocols used for  
2 streaming and the protocols used for downloading.

3 JUDGE FETTING: Understood. Understood. But once you recognize that  
4 there are two machines that you could stream between, you would also  
5 immediately recognize that you could transfer a file whole and intact between  
6 those two.

7 MR. JONCUS: I'm not sure that's true in this world where you are looking at  
8 Wolfe as the -- as the teaching reference. This is fairly early. This is -- this is  
9 2000. It is true that --

10 JUDGE FETTING: Well, FTP has been around since probably, what, the  
11 seventies, if not earlier. I mean it came up virtually along with the creation of  
12 Internet so people have been transferring files for well over a quarter of a  
13 century.

14 MR. JONCUS: That's true.

15 JUDGE FETTING: So, again, wouldn't someone see that as an obvious  
16 alternative to streaming?

17 MR. JONCUS: Combining with what? I mean the question is what's the  
18 reference we are combining with. Wolfe does not have the elements that we  
19 are talking about, does not have the download element. And the Examiner  
20 erred by finding that element in Wolfe.

21 Now, if you are using Wolfe as the -- as the reference to say we want to attach  
22 an advertisement to an audio file, it teaches you want to do that only with a  
23 stream and you don't want to do that with a download because --

24 JUDGE FETTING: But one of ordinary skill has some degree of creativity  
25 and, again, recognizing that you can download an entire file in addition to  
26 streaming, one reading Wolfe would immediately see that you could download

1 the file in its entirety, as well. I mean anyone who -- anyone who's got any  
2 computer programming would see that immediately.

3 MR. JONCUS: I'm not sure that's -- that's true.

4 JUDGE FETTING: Okay.

5 JUDGE LORIN: Well, we recognize the Examiner didn't make that point but I  
6 think -- I think the point that download was known at the time of this invention  
7 isn't really in dispute.

8 MR. JONCUS: That's correct.

9 JUDGE LORIN: I mean download was known at this time.

10 MR. JONCUS: Yes.

11 JUDGE LORIN: That's not the issue.

12 THE WITNESS: Right.

13 JUDGE LORIN: The issue you are trying to say is the Examiner hasn't shown  
14 download using Wolfe.

15 MR. JONCUS: Right. And, yes, that's what is at issue on this appeal, that's  
16 correct.

17 JUDGE LORIN: Yeah, that's the point you are trying to make.

18 MR. JONCUS: Right. And I think, also --

19 JUDGE LORIN: No. I'm sorry. Go ahead.

20 MR. JONCUS: I would also say it would be improper to combine some  
21 official notice that downloading was old with Wolfe because Wolfe teaches  
22 away from -- from downloading as being a desirable outcome because it  
23 teaches with the advertisement you want to bill the advertiser every time it is  
24 played.

25 JUDGE LORIN: Right, and I note, again, this is not an issue in the case, but  
26 hypothetically, assuming that is the issue -- that were to be an issue in this

1 case, can you show me again in Wolfe where one would not -- where one is --  
2 where it teaches away from saving, where exactly that was.

3 MR. JONCUS: I believe it is column 6 -- it is the same sentence that the  
4 Examiner cited -- column 6, lines 8 through 12.

5 JUDGE LORIN: 8 through 12?

6 MR. JONCUS: Right. The sentence says -- and it is talking about security --  
7 "It further includes encoding and decoding music in a manner that ensures that  
8 the ultimate subscribers cannot separate the music from the advertising copy or  
9 copy it for their personal use and dissemination in violation of licensing  
10 terms."

11 So it is describing licensing terms that says the users can't copy it and  
12 disseminate it and it is prescribing a security system to prevent people from  
13 copying it.

14 JUDGE FETTING: But it says it does it by encoding. It doesn't necessarily  
15 say that streaming is the particular vehicle. It says that encoding --

16 MR. JONCUS: That sentence.

17 JUDGE FETTING: You could certainly encode it so that it could only be  
18 played once.

19 MR. JONCUS: A download, I believe, could be encoded.

20 JUDGE FETTING: You could encode -- you could encode a download so it  
21 could only be played once.

22 MR. JONCUS: If there were -- the player had that feature to recognize that  
23 code, it would just be some marriage, and we are speculating here, right, as to  
24 what software can do and software can be made to do a lot of different things.  
25 That sentence is what the Examiner relied -- what I just read to you is what the

1 Examiner relied on to say that this patent teaches downloading but that was a  
2 false logic. That was --

3 JUDGE LORIN: No, the Examiner -- I think the Examiner cited this to show  
4 that it was possible to save and then you could make the jump to say that the  
5 streaming -- that the stream could be stored; right? The implication of copying  
6 means it was first stored or else you can't copy it.

7 MR. JONCUS: That's not true. That's the fallacy of denying the antecedent.

8 JUDGE LORIN: Right. I saw that in your Brief.

9 MR. JONCUS: Just because you don't have security doesn't mean you can  
10 save it. So, if Queen Elizabeth is an American citizen, that's a true premise --

11 JUDGE LORIN: No, I understand your logic, I do.

12 MR. JONCUS: -- then she is a human being.

13 JUDGE LORIN: I understand your logic but I asked you to show me the  
14 reference you could not save it. Because this is supposed to be a streaming  
15 and if it is a stream and not a download, according to your definition for  
16 "download," this stream in Wolfe cannot be saved.

17 MR. JONCUS: It is -- there isn't a single sentence that says you can't save  
18 this.

19 JUDGE LORIN: Right. And you are using the word "copy" because it says  
20 it uses the security system so that you can't copy. The implication is that this  
21 stream cannot be stored because storage is required to copy the file.

22 MR. JONCUS: Right. And -- yes, I'm saying this sentence -- this sentence  
23 here says that the inventor here in Wolfe did not want this invention to involve  
24 copying.

25 JUDGE LORIN: Because of the security measure, not because it is a  
26 streaming.



1 MR. JONCUS: Well, a security measure is one way to prevent copying.  
2 Streaming would be another way to prevent copying and it is not as secure as  
3 having a security system on top of the stream.  
4 It is just the architecture of the -- of this Wolfe invention requires that you be  
5 paid for each time it is streamed, and if it was actually saved and replayed,  
6 then this -- this Wolfe invention doesn't work. It is against the purposes of  
7 Wolfe. You can't tell me how many times a user would replay it and you can't  
8 bill the advertiser for replays of the song.

9 JUDGE LORIN: Well, be that as it may, I'm not sure I see the reference  
10 saying you cannot save and that you cannot store. It comes down to  
11 interpreting this reference as a whole as being directed to streaming as opposed  
12 to download, as you have construed the term.

13 MR. JONCUS: Well, can I point you to column 6, line 54.

14 JUDGE MOHANTY: Of Wolfe?

15 MR. JONCUS: Of Wolfe, yes. It talks about block 108 validates content  
16 authorization by prohibiting replay of the same music in a single request and  
17 limiting the number of requests. The indications here and there in Wolfe are  
18 that it is a pay-for-play system and you pay and it is -- by advertisers pay every  
19 time the data is streamed.

20 JUDGE MOHANTY: You seem to be equating the download with storage;  
21 am I correct in that?

22 MR. JONCUS: Yes.

23 JUDGE MOHANTY: In a stream, wouldn't -- wouldn't the data have to be  
24 stored even just for a nanosecond in order to be played?

25 MR. JONCUS: There is offering buffering but it is not saved in a way that  
26 allows replay, it is saved in a buffer so that you don't have, you know, jerky --

1 JUDGE MOHANTY: Yeah, but it must be saved internally some way in order  
2 to play.

3 MR. JONCUS: In memory but the software is designed to discard it. That's  
4 the way all streams work, is it discards the stream and also it is not a  
5 complete -- it is not a save of the complete audio work, it is just a -- holds a  
6 backlog there so that it can be played and not run out of data but the complete  
7 work from the beginning to end is not saved.

8 And if I could point to our other claims, claim 30, for example, requires, in the  
9 last phrase, "transmitting at least one combined file to a user to store the  
10 combined file in its entirety for later playback." So that's not -- that's not what  
11 happens with streaming. That's not what Wolfe discloses. It doesn't disclose  
12 storing the entire file for later playback. Wolfe discloses pay for play.

13 JUDGE FETTING: But doesn't the fact that you list that limitation in a  
14 dependent claim imply that the deep independent claim is not necessarily that  
15 narrow?

16 MR. JONCUS: No, claim 30 is an independent claim.

17 JUDGE FETTING: Okay.

18 JUDGE LORIN: No, I think -- I think what Judge Fetting is saying is in  
19 Claim 14, where you say -- where you say it's -- you mention available for  
20 download, that means that download does not inherently mean it needs to be  
21 saved.

22 MR. JONCUS: We read into download and we think it is a term of art that  
23 download means it has to be saved as part of the definition of "download."  
24 That's what a person of ordinary skill in the art would understand "download"  
25 to mean. But I say -- you say -- the claim 30 does not diminish that. Claim 30  
26 says make it available for download, in the last phrase, by end user, "making

1 the combined files available for download and transmitting," so it uses a  
2 different word, and then it breaks out what download means -- "transmitting at  
3 least one combined file to a user to store the combined file in its entirety for  
4 later playback." So it does not use the word "transmit" there instead of  
5 download.

6 JUDGE LORIN: Well, what you are saying -- I mean it is redundant, then, is  
7 what you are saying, because if download is transmitting and storing, which is  
8 your construction of the word "downloading," then you said the same thing  
9 twice.

10 MR. JONCUS: No. Making the combined files available for download does  
11 not include the step of transmitting, actually doing the download.

12 JUDGE LORIN: Well, that's true. That's true. I'll give you that.

13 MR. JONCUS: So it is a conditional step there.

14 JUDGE LORIN: That's true.

15 MR. JONCUS: And then the other independent claim is claim 35, again, use  
16 the same structure as claim 30, making the combined audio file accessible for  
17 download by multiple users, and then the last step, transmitting the combined  
18 audio file to a user computer where the entire combined audio file is saved for  
19 later playback or transferred to an external multimedia player.

20 I would also like to point out claim 34, which is a dependent claim, on claim  
21 30, which further shows how we are being consistent with the word  
22 "download."

23 Claim 34 says, "The method of claim 30, further comprising transmitting that  
24 one combined file to a second user for store for later playback." So we are  
25 talking about saving and storing and being able to disseminate the file to other  
26 users.

1 This was a real innovation at the time. AMP3.com was the first company on  
2 the Internet to compensate artists for their music being downloaded. No one  
3 else ever did it before AMP3.com did it using this model. This is the patent  
4 application for that business that went into business in February 1999. Long  
5 before iTunes, long before Napster, which, of course, didn't compensate  
6 owners, before MP3.com compensated any owners, this was a real business  
7 model and it is -- today, this same business model is being used by WE3.com  
8 -- WE7.com -- I'm sorry -- which is combining advertisements with audio files  
9 and giving them away for free.

10 JUDGE LORIN: All right, counsel. Any more comments?

11 MR. JONCUS: No further comments, your Honors, unless you have any other  
12 questions.

13 JUDGE FETTING: No questions.

14 JUDGE LORIN: No, no further questions. Thank you very much, counsel.

15 MR. JONCUS: Thank you.

16 Whereupon, the proceedings at 11:07 a.m. were concluded.